

REMARKS/ARGUMENTS

Claims 3, 5-20, 36, and 39-54 are pending. Claims 3-20 stand rejected under 35 U.S.C. §103 as unpatentable over Tozzoli (U.S. 5,717,989) in view of Martin (U.S. 7,047,219). These rejections are respectfully traversed. By this Amendment, claims 3 and 36 are amended and claims 39-54 are new. Support for new claims 39-54 can be found throughout the specification, drawings, and claims as originally filed. Specifically, the new claims are method claims corresponding to system claims 3-20; no new matter has been added.

35 U.S.C. §103 Rejections

The analysis supporting a rejection under §103 must be made explicit. Where an articulated reasoning to support the legal conclusion is not provided, the examiner fails to make a *prima facie* case of obviousness, and the applicant is under no obligation to produce evidence or argument in favor of patentability. M.P.E.P. §2142. Thus, to support a *prima facie* case of obviousness, the Examiner must demonstrate that each feature recited in the claims is found in the cited art, or provide explicit reasoning to support the finding that the features would be obvious to one of skill in the art at the time the invention was made. See M.P.E.P. §§ 2141, 2142.

The present Office Action asserts that each and every feature recited in the claims is explicitly found in the cited art. However, the Office Action fails to provide any reasoning or evidence to support the alleged correspondence of features disclosed in the cited references with the features recited in the present claims. Therefore, it is respectfully submitted that the Office Action fails to support a *prima facie* case of obviousness, and the claims are allowable over the cited art.

Independent claims 3 and 36 recite, *inter alia*, financing to be utilized by the seller in producing one or more goods or services in accordance with the purchase order agreement. Similar features were previously presented in claim 4, and the final Office Action asserts that Tozzoli discloses this feature in his claim 12. However, this portion of Tozzoli merely states “determining...whether the trade transaction defined by the offer data and response data complies with the funder’s criteria.” That is, this disclosure is directed to determining whether

criteria set by a funder have been met – it is unrelated to the recipient or utilization of any subsequent funding. The Office Action further asserts that “one of the funder’s criteria is the shipment of the goods which is service to by the buyer to be complete. [sic].” The Office Action appears to argue that Tozzoli suggests that a funder can require shipment of goods as a criteria and, if the goods are shipped, the funder provides financing to a seller. However, the Office Action provides no evidence from Tozzoli or any other source to support this argument. This is unsurprising, since Tozzoli merely discloses a funder providing a guarantee of payment if certain criteria are met:

Generally, a funder guarantees payment for transactions processed by the trade system between an approved buyer and a seller which satisfy the funder’s predetermined criteria.

Col. 5, lines 35-38 (emphasis added). There is no suggestion in the cited portion of Tozzoli that financing provided to a seller is used in producing one or more goods or services in accordance with a purchase order agreement as recited in claim 4. At most, Tozzoli merely describes a funder confirming compliance with a funder’s criteria, and that a funder can guarantee payment of transactions processed by his system. This is unrelated to any financing provided to a seller, that is utilized by the seller in producing one or more goods or services in accordance with a purchase order agreement. For at least this reason, the Office Action fails to support a *prima facie* case of obviousness, and claims 3 and 36 are allowable over the cited art. The dependent claims are allowable for at least the same reasons as the independent claims from which they depend, and are patentable for additional reasons.

Similar arguments were presented in the after-final reply filed February 24, 2009. The Advisory Action rejects these arguments on the grounds that “the features upon which applicant relies...are not recited in the rejected claim(s).” *See* Advisory Action mailed March 6, 2009. However, the “features” identified by the Advisory Action correspond to disclosure within the cited art that Applicant has argued do not disclose the claimed features, not the features recited in the present claims. For example, the Advisory Action indicates that “determining...whether trade...” with respect to “claim 12” is not recited in the claims. However, this refers to Tozzoli’s claim 12, i.e., the art cited by the Office Action – not a feature recited in the present claims.

Thus, the fact that the feature “determining...whether trade...” is not in the present claims supports Applicant’s argument, since this is the disclosure the final Office Action alleged rendered the claims obvious. For at least this reason, the Advisory Action fails to remedy the defects of the final Office Action with respect to these claims. Withdrawal of the rejections is respectfully requested.

Several sets of dependent claims are discussed in further detail below. However, the omission of a specific claim or feature from this discussion is not an indication of agreement with the Office’s analysis or conclusions.

Claims 5-6 and 39-40

Claims 5 and 39 recite, *inter alia*, “wherein the financing comprises a loan provided to the seller by a lender, the loan generating an obligation for the seller to repay the loan amount to the lender.” The Office Action asserts that Tozzoli discloses this feature at column 5, lines 35-46. However, this passage merely describes a payment guarantee provided by a funder:

Generally, a funder guarantees payment for transactions processed by the trade system between an approved buyer and a seller which satisfy the funder's predetermined criteria. The trade system of the present invention verifies that each portion of a transaction properly relates to the purchase order and criteria established by the funder and possibly by the trade system, in a process referred to herein as filtering, and generates payment instructions at appropriate times.

A “payment guarantee” as described by Tozzoli is not a loan provided to the seller. Rather, it is a promise by the funder to make a payment required of the buyer if the buyer does not make the payment. Such use of payment guarantees is well-known in the art, and the Office Action provides no evidence that the guarantee described by Tozzoli operates in any other manner. Further, it is well-known in the art that a “loan” such as recited in claims 5 and 39 results in an obligation of repayment by the entity receiving the loan. Thus, for example, in claim 5 the “loan provided to the seller by a lender” generates an obligation for the seller to repay the loan amount to the lender. Tozzoli’s “funder guarantee” creates no such obligation.

In Tozzoli's system, if the buyer does not make a payment to the seller, the funder will make the payment instead. This simply does not create an obligation for the seller to repay the funder and, therefore, is not properly interpreted as a "loan" as recited in claim 5.

The Advisory Action dismisses this argument, on the ground that this feature of a "loan" was not incorporated into the claims. Claim 5 is amended to incorporate the alleged missing feature, rendering this argument moot. For at least this reason, the Office Action fails to support a *prima facie* case of obviousness, and claims 5 and 39 and all claims dependent therefrom are allowable over the cited art.

Claims 9 and 43

Claims 9 and 43 recite, *inter alia*,

the loan is provided to the seller at least in part in return for the seller assigning to the lender at least a portion of the seller's **entitlement to payment from the buyer** in connection with the purchase order agreement.

The Office Action asserts that this feature is disclosed by Tozzoli because Tozzoli describes "insurance is to cover lender's losses as will [sic] as others." The Office Action fails to indicate which portion of Tozzoli is asserted to disclose the cited insurance arrangement, or how it is believed to correspond to the recited features. Claims 9 and 43 recite a loan provided to a seller by a lender, in exchange for which the sellers assigns a portion of the seller's **entitlement to payment from the buyer** to the lender. The payment to which the seller is entitled is payment from the buyer in connection with the purchase order agreement, it is not insurance to cover loss by the seller or any other entity. Thus, the recited seller assigning to the lender at least a portion of the seller's entitlement to payment from the buyer is not reasonably interpreted as being an insurance against loss, whether the loss is incurred by the lender or the seller. For at least this reason, the Office Action fails to support a *prima facie* case of obviousness with respect to claim 9, and claim 9 and all claims dependent therefrom are allowable over the cited art.

This argument was presented in the after-final reply, but is not directly addressed by the Advisory Action. Notably, the features which Applicant has argued are not disclosed by the cited art are directly recited in the claim. Should the Office maintain the rejection of these

claims on the same ground as in the final Office Action, Applicants respectfully request that the Examiner specifically identify and explain the disclosure alleged to correspond to the recited features so as to expedite further prosecution of this application.

Claims 17 and 51

Claims 17 and 51 recite, *inter alia*,

the seller's **obtaining the loan is contingent upon** at least one of

the seller's satisfying all of the seller's obligations as defined by the purchase order agreement and

the buyer's waiving any rights to avoid any payments associated with the purchase order agreement due to the seller's failure to fulfill the seller's obligations as defined by the purchase order agreement.

(Reformatted for clarity.) The Office Action asserts that Tizzoli discloses these features as "shipment; BOL" and in column 1, line 1 – column 4, line 63. Applicants respectfully disagree. Even if Tozzoli discloses "shipment; BOL," i.e., a seller complying with a purchase order by shipping an item, which Applicants do not concede, this is unrelated to the seller's obtaining a **loan** being contingent upon the seller satisfying all of the seller's obligations and/or the buyer's waiving rights as recited in claims 17 and 51. The other cited portions of Tizzoli merely describe the use of letters of credit and a system for generating a purchase order. The Office Action offers no further suggestion that Tizzoli describes a seller obtaining a loan that is contingent upon satisfaction of the seller's obligations or waiver of the buyer's rights. For at least this reason, the Office Action fails to support a *prima facie* case of obviousness of claims 17 and 51, and these claims and all claims dependent therefrom are allowable over the cited art.

This argument was also presented in the after-final reply, but is not directly addressed by the Advisory Action, and the features which Applicant has argued are not disclosed by the cited art are directly recited in the claim. Should the Office maintain the rejection of these claims on the same ground as in the final Office Action, Applicants respectfully request that the Examiner specifically identify and explain the disclosure alleged to correspond to the recited features so as to expedite further prosecution of this application.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 202-481-9900.

The Commissioner is authorized to charge any fees due or credit any overpayment to the deposit account of Townsend and Townsend and Crew LLP, Deposit Account No. 20-1430.

Respectfully submitted,

/ASKamlay/
Aaron Kamlay
Reg. No. 58,813

DATE: June 15, 2009

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 202-481-9900
Fax: 415-576-0300
AK:lrd
62063394 v1